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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/877,317	06/08/2001	John J. Sie	19281-001610	9420
20350 7590 09/18/2008 TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834				
EXAMINER BOUTAH, ALINA A				
ART UNIT 2143		PAPER NUMBER		
MAIL DATE 09/18/2008		DELIVERY MODE PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

<b>Application No.</b> 09/877,317	<b>Applicant(s)</b> SIE ET AL.
<b>Examiner</b> ALINA N. BOUTAH	<b>Art Unit</b> 2143

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 10 September 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 9-15 and 19-32.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_.

/Alina N Boutah/  
Examiner, Art Unit 2143

Continuation of 11, does NOT place the application in condition for allowance because:

1. The enablement requirement was not met. Applicant pointed to figures 21 and 22 as citing the claimed invention. However, these figures and their corresponding descriptions merely describe a process for using a NVOD cycle of programs to provide a VOD-like service. It does not disclose "wherein determining if any first segment of the plurality of programs are not already stored and recording any first segment that is not already stored are performed before any user request for any of the plurality of programs."
2. In response to Applicant's argument that Inoue does not teach recording all or any first portion before a program is selected or requested by the user, as discussed in the previous office action, this feature is obvious. One of ordinary skill in the art would have recorded all programs in order to allow users to view all available contents, thus giving user more choices.
3. In response to Applicant's argument that Inoue does not teach program segments, but teaches a first portion. The PTO respectfully submits that the portion is interpreted as segment.
4. Regarding claim 9, in response to Applicant's argument that Inoue does not teach determining if any of a first segment of each of a plurality of programs sent from the content provider and recording any first segment of each of the plurality of programs that are not already stored before any user request for any of the plurality of programs that are not already stored, as cited in the rejection, Inoue teaches pre-storing programs. Although Inoue does not explicitly teach determining if any of a first segment of each of a plurality of programs sent from the content provider before any user requests for any of the plurality of programs are not already stored, it would have been obvious to one of ordinary skill in the art to determine if any of a first segment of a program is not already stored and recording a segment that is not already stored because doing so will allow only segments that are needed to be recorded, thus saving storage space.
5. Regarding claim 19, in response to Applicant's argument that Inoue does not teach or suggest recording a first segment of all of a plurality of programs sent from the content provider before any user request for the program, as discussed in the rejection, although not explicitly taught by Inoue, one of ordinary skill in the art would have recognized that this is an obvious variation. It would have been obvious to record all programs in order to allow users to view all of available contents, thus giving user more choices.